IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Suit No. 1032 of 1987

Dena Bank ..Plaintiffs

vs.

1. Amratlal C.Patel & ors. ..Defendants

Mr.V.H.Kotatida for plaintiffs
Mr.Rajiv Narula for defendant no.1

CORAM: S.C.DHARMADHIKARI J.
14th August, 2007

P.C.

1. M/s Dena Bank has filed the suit for recovery of Rs.55811.80 along with interest at the rate of 11% p.a. from filing of the suit till judgment.

2. The case set up by the plaintiffs Bank in the plaint is that the defendant nos.1 to 3 approached the Bank for grant of loan of Rs.43,000/- for purchasing Matador Pick Up van for defendant no.1. The demand promissory note was executed and agreement of hypothecation together with letter of guarantee were also executed. The witness has produced the receipt and profarma bill issued by M/s Shah and Sanghi towards purchase of the vehicle which evidences that the vehicle was purchased by defendant no.1. Thereafter application for financial assistance is made in

the requisite form and the witness has filed the original application seeking financial assistance. He identifies the signature of defendants thereto. He states that the contents thereof are also correct and gets support from the document issued by M/s Shah and Sanghi, the dealers from whom the vehicle has been purchased.

3. The original letter of hypothecation and letter of guarantee are also produced along with the demand promissory note dated 14th September, 1978. The witness has duly identified the signatures o the same. The letter of guarantee is also signed by defendant nos.2 and 3.

4. The extract of account has been duly produced from the original ledger. The account has been maintained by the plaintiffs Bank in ordinary and regular course of business as a banker. The account of the first defendant duly reflects the amount of loan sanctioned and disbursed and interest so also balance due and payable. The same has been signed by the accountant. Mr.Kotadia states that account having been produced from the bankers' book requirement stipulated in the Bankers' Book Evidence Act stands satisfied and extract together with entries are duly proved.

5. Stamp receipt which clearly evidences the payment of Rs.44,964/- towards purchase of vehicle is also produced. Even the Insurance Policy is also produced.

6. All these documents are produced along with the affidavit in lieu of the examination in chief.

7. It is contended by Mr.Kotadia that there is no written statement filed on behalf of defendant no.1 although the writ of summons has been duly served in the year 1987.

8. As far as defendant nos.2 and 3 are concerned, it is contended by him that their written statement has nothing but evasive denials. In this behalf he invites my attention to the written statement wherein it is urged that they are not aware of and do not admit what is stated in paragraphs 2 and 3 of the plaint. In para 5 of the written statement this is what is stated.

> "5. With reference to paragraph 4 of the plaint, these defendants crave leave to refer to and rely upon the Demand Promissory note, the Deed of Guarantee and the said Agreement of Hypothecation, when produced, to ascertain its true meaning and legal effect thereof. These defendants say and

submit that so far as the Guarantee, Exhibit B and the Promissory note was obtained in blank and the figures of interest have been put in lateron. These defendants say and submit that in view of such material alterations, these defendants are discharged from making any payment under the said promissory note. These defendants say that so far as the Guarantee is concerned, these defendants are discharged in view of the fact that the said guarantee is not a continuing guarantee and is barred by law of limitation. In any event these defendants say and submit that as stated hereinafter the plaintiffs have taken fresh documents in respect of the said facility from the 1st and 4th Defendant without the consent and/or knowledge of these defendants. In view thereof and in view of the novatio these defendants submit that they are discharged as the Guarantors and also from making any payment under the Promissory Note, Exhibit A to the plaint. These defendants submit that the guarantee Exhibit B to the plaint was obtained in blank and the plaintiffs have filled up the said guarantee without the consent and knowledge of these defendants and therefore these defendants are discharged as guarantors and suit

> is, therefore, liable to be and should be dismissed against these defendants with costs. With further reference to paragraph 4 of the plaint, these defendants are not aware of and do not admit that the 1st defendant had agreed to pay interest at the minimum rate of 11 per cent per annum with quarterly rests as alleged or otherwise and put the plaintiffs to the strict proof thereof."

Mr.Kotadia states that the pleas are nothing but denials and when the documents are admitted, the signatures thereon are not admitted. When both are served with the notices they contend that they are not aware of the transaction itself.

9. The pleas raised would, in my opinion, cast the entire burden upon the defendants to show that their signatures are obtained on the documents, the contents of which, were never known to them. All the pleas as are raised in the written statement have to be substantiated by leading evidence. The defendant are not only not willing to step into the witness box but have not shown any interest in cross examining the plaintiffs' witness either. It is in these circumstances that I exercise my discretion under the Code of Civil Procedure. The documents and their

contents are proved. The defendants have not remained present to cross examine the plaintiff on their case. The affidavit in lieu of the examination in chief has been duly served so also the documents along with the list.

10. This being the claim of the Bank, it is fully corroborated and proved by the documents, existence and contents of which are also proved, then, liability based thereon is clearly that of the defendants. In such circumstances, the suit is decreed as prayed. Advocate's costs to be quantified as per Rules.

11. All concerned to act on authenticated copy of this order.

(S.C.DHARMADHIKARI J.)